

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**CHRISTOPHER GERACI, individually and
on behalf of his children, HANNAH
GERACI and SHELBY GERACI,**

Plaintiffs,

**1:04-CV-1219
(GLS\RFT)**

v.

**ALBANY COUNTY, JAMES CAMPBELL,
ALBANY COUNTY SHERIFF'S
DEPARTMENT, and SARA STOUT,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFFS:

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21 Everett Road Extension
Albany, New York 12205

FOR THE DEFENDANTS:

ROCHE, CORRIGAN LAW FIRM
36 South Pearl Street
Albany, New York 12207

ROBERT P. ROCHE, ESQ.

**Gary L. Sharpe
U.S. District Judge**

MEMORANDUM-DECISION AND ORDER

I. Introduction

Christopher Geraci alleges, *inter alia*, that Lt. Sara Stout, a former employee of the Albany County Sheriff's Department, conspired with his ex-wife, Heather Geraci, to deny him custody of his two children. In addition, he claims that Albany County and the Albany County Sheriff's Department are liable under 42 U.S.C. § 1983 for their failure to train and supervise their employees. See *Dkt. No. 1.*¹ Pending under Federal Rule of Civil Procedure 56 is defendants' motion for summary judgment. See *Dkt. No. 29*. For the reasons that follow, defendants' motion is denied.

II. Facts

Heather Geraci is the natural parent of Shelby and Hannah Geraci (the children). See *Def. SMF ¶1; Dkt. No. 35*. In the Spring of 2002, the children were the object of cross-petitions filed in New York Family Court by both parents, Heather and Christopher Geraci. See *id.* at ¶2. On September 1, 2002, Heather Geraci left New York State. See *id.* at ¶3. At this time, the Family Court provided for unsupervised visitation of the

¹In particular, Geraci asserts the following causes of action: (1) defendant Stout's conspiracy, in violation of 42 U.S.C. § 1983, to deny Geraci's custodial rights as a parent; (2) defendants' Campbell and Albany County Sheriff's Department's improper training and supervision of its employees, in violation of 42 U.S.C. § 1983; (3) defendant Albany County's negligence; (4) negligent infliction of emotional distress; (5) intentional infliction of emotional distress; and (6) violation of RICO, 18 U.S.C. § 1962. See *Dkt. No. 1*.

children by Christopher Geraci. See *id.*

In October, the Family Court awarded sole custody of the children to Christopher Geraci. See *Def. SMF ¶4; Dkt. No. 35.* Heather repeatedly failed to appear for court appearances or submit to the court's jurisdiction. See *id.* She traveled from shelter to shelter until she arrived in Dickinson, North Dakota in February of 2003. See *id.* at ¶5. During this time, she would periodically contact Lt. Sara Stout, a member of the Albany County Sheriff's Office. See *id.* at ¶6.

Defendants claim that Heather never advised Lt. Stout where she was. See *Def. SMF ¶7; Dkt. No. 35.* Instead, they maintain that prior to her departure, Lt. Stout and another investigator urged Heather not to leave the State with the children and to trust the judicial process. See *id.* To the contrary, Geraci claims that Lt. Stout knew Heather was in Sturgis, South Dakota, allowing her to stay there in a cabin she owned. See *Pl. SMF ¶7; Dkt. No. 39.* In fact, he maintains that Lt. Stout was actually in South Dakota with Heather during the time when Heather had recently committed a felony in North Dakota, was violating the Albany County Family Court's order, and was the subject of an arrest warrant. See *id.*

In June 2003, another client of the Dickinson, North Dakota shelter

informed authorities that Heather Geraci and her children were there. See *Def. SMF ¶8; Dkt. No. 35.* Heather was apprehended, and the children were placed in foster care. See *id.* Heather eventually left North Dakota with the children. See *id.* at ¶9.

Defendants maintain that from the Spring of 2003 until she resigned, Lt. Stout became increasingly unhealthy, and she had several periods of absence from work to accommodate her treatment and recovery. See *id.* at ¶12. Instead, Geraci claims that Lt. Stout was in Sturgis, North Dakota with Heather during the time she was absent from work. See *Pl. SMF ¶12; Dkt. No. 39.* Defendants maintain that the Albany County Sheriff's Department investigated Lt. Stout's involvement in the Geraci matter. See *Def. SMF ¶14; Dkt. No. 35.* Geraci disputes this fact. See *Pl. SMF ¶14; Dkt. No. 39.*

On November 3, by facsimile, Lt. Stout submitted her resignation from the Albany County Sheriff's Department. See *Def. SMF ¶15; Dkt. No. 35.* The authorities in North Dakota prosecuted several people involved in the Geraci matter, but there were no charges brought against Lt. Stout. See *id.* In March of 2005, Heather was apprehended in Utah, and the children were returned to Geraci while Heather was prosecuted. See *id.* at

¶16. Lt. Stout died in March 2006. See *id.*

III. Discussion

A. Standard of Review - Motion for Summary Judgment

Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986) (citing FED. R. Civ. P. 56(c)); *Globecon Group, LLC v. Hartford Fire Ins. Co.*, 434 F.3d 165,170 (2d Cir. 2006) (citation omitted). All reasonable inferences must be drawn in favor of the nonmoving party. See *Allen v. Coughlin*, 64 F.3d 77, 79 (2d Cir.1995). The moving party “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (citation omitted); see also *SEC. v. Kern*, 425 F.3d 143, 147 (2d Cir. 2005). “A ‘genuine’ dispute over a material fact only arises if the evidence would allow a reasonable jury to

return a verdict for the nonmoving party.” *Dister v. Cont'l Group, Inc.*, 859 F.2d 1108, 1114 (2d Cir. 1988) (citation omitted). However, “[c]onclusory allegations, conjecture and speculation...are insufficient to create a genuine issue of fact.” *Kerzer v. Kingly Mfg.*, 156 F.3d 396, 400 (2d Cir. 1998).

B. Defendants' Motion

As an initial matter, defendants point out that no process has been served on Lt. Stout. Geraci does not respond to defendants' observation. At this juncture, the period within which Geraci had to timely effectuate service on Lt. Stout has expired. See FED. R. CIV. P. 4. Accordingly, all claims against Lt. Stout are dismissed.²

The remainder³ of defendants' motion attacks the credibility of plaintiffs' witnesses and the truthfulness of Geraci's allegations.⁴

²Lt. Stout is now deceased, and plaintiffs have not sought to pursue their action against her estate.

³Defendants' reply brief attacks Geraci's *Monell* claim. Specifically, defendants argue that Geraci's complaint fails to state a claim for relief against them because Geraci has not demonstrated how defendants' policies furthered Lt. Stout's unconstitutional behavior. In his complaint, Geraci alleges that defendants failed to supervise Lt. Stout, and therefore, she was able to behave in an unconstitutional way without consequences. Construing the facts in the light most favorable to Geraci, the complaint states a sufficient *Monell* claim against defendants at this juncture. Moreover, because this Order is not entirely dispositive and all other claims against the county defendants survive, the court will also allow Geraci's *Monell* claim to survive.

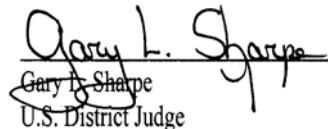
⁴Based on evidentiary arguments, both parties request that the court reject certain documents relied on by their opponent. At this juncture, the court declines to reject or strike any supporting affidavits or other documents. The parties may renew their evidentiary arguments, if they so choose, at trial.

Defendants do not argue that Geraci's complaint fails to state claims for relief against them. At this juncture, the court's role is not to weigh the evidence and the credibility of witnesses and accept one party's version of the facts over another. These determinations are for trial, reserved solely for the trier of fact. Accordingly, defendants' motion is denied.

WHEREFORE, for the foregoing reasons, it is hereby
ORDERED that all claims against Lt. Stout are **DISMISSED** and Lt. Stout is removed from the caption of this lawsuit; and it is further
ORDERED that the remainder of defendants' motion for summary judgment (*Dkt. No. 29*) is **DENIED**; and it is further
ORDERED that the Clerk provide a copy of this Decision and Order to the parties.

IT IS SO ORDERED.

August 21, 2007
Albany, New York


Gary L. Sharpe
U.S. District Judge